

## CHAPTER 15

### Public Lands and Acquisition of Private Interests Therein

#### Table of Contents

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
1.	Purpose and Scope.....	15-1
2.	References.....	15-1
3.	Definitions.....	15-1
4.	Authority to Withdraw and Reserve Public Lands.....	15-2
5.	Procedures for Withdrawal of Public Lands.....	15-3
6.	Planning Reports for the Withdrawal of Public Lands.....	15-4
7.	Required Approvals.....	15-10
8.	Filing of Application.....	15-11
9.	Action by Engineering Field Division Following Publication of Notice of Proposed Withdrawal.....	15-12
10.	Hearings on Proposed Withdrawals.....	15-12
11.	Issuance of a Public Land Order.....	15-12
12.	Effect of a Public Land Order.....	15-13
13.	Drafting of Proposed Legislation.....	15-13
14.	Effect of Act of Congress Withdrawing Public Lands..	15-13
15.	Lands in the Outer Continental Shelf.....	15-14
16.	Restricting Lands in the Outer Continental Shelf....	15-14
17.	Planning for Restrictions of the Outer Continental Shelf.....	15-14
18.	Applications for Restrictions.....	15-15
19.	Rights in Public Lands Prior to Withdrawal.....	15-15
20.	Acquisition of Private Rights.....	15-15
21.	Exchange of Land for Public Lands.....	15-16
22.	Acquisition of Unpatented Mining Claims.....	15-16
23.	Possessory Interests.....	15-17
24.	Delegation of Authority.....	15-21
25.	Representation in Adverse Proceedings.....	15-22
26.	Extinction of Small Tract Leases.....	15-22
27.	Grazing Permits.....	15-22
28.	Payment for Leases Under Grazing Permits.....	15-23
29.	Other Methods of Obtaining Use of Public Lands.....	15-23
30.	Use of Public Lands for Roads, Pipelines, and Utilities.....	15-24
31.	Use of Lands Under Permit.....	15-25
32.	Lands Withdrawn and Reserved for Another Agency....	15-25

## CHAPTER 15

### Public Lands and Acquisition of Private Interests Therein

#### Table of Contents (cont'd)

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
33.	Management of Withdrawn Public Lands by the Navy Department.....	15-26
34.	Authority to Revoke Withdrawals.....	15-26
35.	Disposal of Lands Withdrawn from Public Domain.....	15-26

#### APPENDIXES

15-A	"Quitclaim" (Format)
15-B	"Leases for Government use of Mining Interests" (Format)
15-C	"Department of the Interior Instructions of January 13, 1916"

## CHAPTER 15

### PUBLIC LANDS AND ACQUISITION OF PRIVATE INTERESTS THEREIN

#### 1. PURPOSE AND SCOPE.

The purpose of this Chapter is to provide background, authority and procedures to be followed in the withdrawal of required lands from the public domain, use of such lands, and return to the public domain when no longer required. It also provides for the acquisition of privately owned lands or interest therein required for use in connection with use of public lands.

#### 2. REFERENCES.

- (a) 36 Stat. 847; 43 U.S.C. 141 of 25 June 1910
- (b) Executive Order 9337 of 24 April 1943
- (c) Executive Order 10355 of 26 May 1952
- (d) 72 Stat. 27; 43 U.S.C. 155 of 28 Feb 1958
- (e) 43 C.F.R. 2350 Regulations of the Department of Interior
- (f) DODINST 4165.12 of 23 July 1973
- (g) DOD Directive 3100.5 of 8 Nov 1963
- (h) NAVFAC P-80
- (i) NAVFAC P-272
- (j) 75 Stat. 27; 43 U.S.C. 155
- (k) 67 Stat. 462; 43 U.S.C. 1331

#### 3. DEFINITIONS.

a. "Public Lands" and "Public Domain Lands". These terms are considered synonymous. They are used to designate those lands owned by the United States that are subject to entry, use, sale, or other disposal under the Public Lands Laws such as mining, grazing, or small tract leasing. These terms do not include all lands owned by the United States. As used in the Act of Congress approved February 28, 1958 (72 Stat. 27; 43 U.S.C. 155), the term "public lands" also includes Federal lands and waters of the Outer Continental Shelf, as defined in Section 2 of the Outer Continental Lands Act (67 Stat. 462).

b. "Withdrawal" means that the lands withdrawn are excluded from some or all forms of entry, use, sale, or other disposal under the Public Lands Laws as specified in the Public Land Order, Executive Order, or Act of Congress. The above is the specific meaning of the term "withdrawal". However, the term "withdrawal", as used in this publication, includes withdrawals and reservations.

c. "Reservation" of public lands means that such lands are made available to a specified agency for a specific public purpose.

d. "Restriction" means that the areas are removed from the operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1331).

e. "Segregation" of public lands means that such lands have been removed from the operation of the Public Lands Laws with respect to entry, sale or other disposal thereof. The temporary segregation of public lands results from the filing of an application for withdrawal. While persons may still file for mining claims or make application for other forms of entry during this temporary segregation, no action is taken thereon nor do any vested rights result therefrom that would be at variance with the requested withdrawal. Permanent segregation results from the actual withdrawal of public lands, either by an Act of Congress, Public Land Order, or by physical appropriation of the lands to the use of the United States. Any applications for entry made on lands that have been permanently segregated will be disallowed by the Department of the Interior.

f. "Public Land Orders" are the official acts of the Secretary of the Interior under authority delegated by the President under provisions of reference (c), withdrawing, reserving, or restricting lands of the public domain for public purposes, or modifying or revoking previous withdrawals, reservations, or restrictions.

g. "Mining Claim" includes millsite and tunnel rights.

4. AUTHORITY TO WITHDRAW AND RESERVE PUBLIC LANDS.

a. Before there was any express statute on the subject, the authority of the President was recognized, in the exercise of his inherent power, to withdraw public lands from entry, settlement, and other forms of appropriation and to reserve them for public purposes. In order to clarify the rights of occupants of certain withdrawn lands, Congress enacted the Pickett Act of June 25, 1910 (reference (a)) which expressly authorizes the President to withdraw public lands. Section 1 of this Act provides: "The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

This Act did not negate the previously exercised inherent power to withdraw public lands, but was in addition thereto. As a result, since that date, Executive Orders and Public Land Orders withdrawing public lands have done so pursuant to the authority of that Act and the authority otherwise vested in the President.

b. The President delegated his authority to withdraw public lands to the Secretary of the Interior by reference (b). Since that date public lands have been withdrawn by Public Land Orders, rather than by Executive Order as was previously the case. Reference (b) was superseded by reference (c) which is still in effect. Under this Order all of the authority vested in the President to withdraw and reserve lands



in the public domain and to modify or revoke existing withdrawals and reservations was delegated to the Secretary of the Interior. It provides, however, that any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Office of Management and Budget for consideration and adjustment, and that the Director may, in his discretion, submit the matter to the President for determination. Reference (c) also authorized the Secretary of the Interior to issue necessary procedural regulations and also to redelegate his authority to certain designated officers.

c. The authority of the President to withdraw public lands was curtailed in certain respects by reference (d). As this is the same authority delegated to the Secretary of the Interior by reference (c), his authority is also curtailed thereby. Basically this Act takes away from the Executive Department the authority to withdraw public lands in excess of 5,000 acres for defense purposes, subject to the exceptions set out in Section 1 thereof, and places such authority exclusively in the Congress. The Act will not apply, however, during time of war or national emergency hereafter declared by the President or the Congress. Since the enactment of reference (d), the Regulations of the Department of the Interior governing the withdrawal of public lands (reference (e)) have been revised to reflect and implement its provisions.

5. PROCEDURES FOR WITHDRAWAL OF PUBLIC LANDS.

a. Establishment of Requirement for Public Lands. The establishment of a requirement for use of public lands occurs at the activity level based on an approved military mission. Accordingly, a request for withdrawal of public land should be initiated by the Commanding Officer of the activity and submitted to the Engineering Field Division (EFD) via the District Commandant and the Major Claimant of the activity. This request must clearly indicate the location, scope and justification for the proposed withdrawal. The fact that public lands are already owned by the Government and no cost, except for private interest therein, is involved should be given no consideration. The requirement for use of public lands should be held to the minimum area required to support the mission, and must be completely justified.

b. Categories of Withdrawals. Application of the provisions of reference (d) and circumstances pertaining to each withdrawal causes such actions to fall into one of the following categories:

- (1) Public land withdrawals of over 5,000 acres not involving any private interests;
- (2) Public land withdrawals, not in excess of 5,000 acres in which no private interests are involved;
- (3) Public land withdrawals of over 5,000 acres in which private interests are involved;
- (4) Public land withdrawals not in excess of 5,000 acres in which private interests are involved.

c. Action by Engineering Field Division. Upon receipt of a request for withdrawal of public lands from an activity with the approvals of the Commandant and Major Claimant, the EFD will review the request to determine if the proposed action is in compliance with references (e), (f) and (g). If the request, as submitted is not considered to be completely justified, the activity will be requested to furnish required additional information and data or the request will be returned to the activity as appropriate. If the request is completely supported and justified action will be initiated to obtain the required additional approvals. Requests for requisite additional approvals will be obtained by submission of an appropriate report to NAVFACENGCOM, with required information and data, with a request that required additional approvals be obtained.

6. PLANNING REPORTS FOR THE WITHDRAWAL OF PUBLIC LANDS.

a. General. The withdrawal of public lands in excess of 5,000 acres requires legislation by the Congress in accordance with provisions of reference (d). Accordingly, it is necessary that planning reports for this scope of withdrawal be in accordance with provisions of Chapter 3 of this publication. Other withdrawals of less than 5,000 acres which require legislation will also require planning reports in accordance with Chapter 3. This situation occurs when the proposed withdrawal will result in the aggregate of withdrawals for a given activity is more than 5,000 acres since 28 February 1958 or since the last Act of Congress which withdrew lands for the activity. If the proposed withdrawal does not require legislation, the same general type of information is required but not in the same detail as required by Chapter 3.

b. Required Specific Information and Data. The following information and data will be provided in all Planning Reports for the withdrawal of Public Lands, regardless of the format for the report:

(1) Characteristics of the Land. A description of the general characteristics of the land will be given, i.e., desert, agricultural, mountainous, grazing, mineral, timber, or other general descriptive information. It will be determined from the local office of the Bureau of Land Management whether the lands to be withdrawn or any portion thereof, have been classified pursuant to any law or regulation of the Department of the Interior. If classified by the Bureau of Land Management, the type or types of classification, the date thereof, and any other pertinent information concerning the characteristics of the lands will be obtained and provided to NAVFACENGCOM.

(2) Present and Potential Uses. All present and potential uses to which the land proposed for withdrawal can be put will be listed. The list will include uses and potential uses authorized by the Public Land Laws and other uses, such as hunting, fishing, and other recreational uses; control of predatory animals; conservation; fire protection; and other lawful uses. The extent of each use and the significance thereof to the general area will be stated.

(3) Evidence of Physical Possession. A statement will be made concerning all evidences of physical possession such as highways, roads, railways, utilities (above and below ground), irrigation and drainage ditches, grazing, mining, and any other evidences of physical possession, indicating that some person may claim a right or privilege in the land. Each evidence of physical possession, except mining claims and small tract leases, will be discussed separately and such discussions will include a statement concerning the claimed rights for such possession. If claimed under a written instrument, a copy thereof will be provided. If not under a written instrument, the statement will be as detailed as possible and include information as to the period possession has been exercised. Except for mining claims and small tract leases, the names and addresses of claimants and occupants will be provided.

(4) Patented Mining Claims. In the case of mining claims that have been patented, fee title to the lands has been conveyed by the Government to the locator thereof, or his successor in interest. The situation, therefore, is like that of any patented lands and they are to be treated as all other privately-owned lands.

(5) Unpatented Mining Claims. The report will give an estimate of the number of unpatented mining claims within the area proposed for withdrawal, an estimate of the number of such claims on which assessment work has been performed and affidavits thereof have been currently filed, an estimate of the number of valid claims, and an estimate of the total amount of money which will be required to acquire all of the outstanding valid claims and possessory interests.

(6) Small Tract Leases. In areas where small tract leases exist, the report will contain information as to the date or dates when the lands were classified for this purpose and by what order. A copy of the order or orders should be included as an exhibit to the report. In addition the report should list all such leases showing:

- (a) The identifying number thereof,
- (b) The name and address of the lessee,
- (c) Its location
- (d) Whether it has been surveyed
- (e) What improvements, if any, have been placed on the

land, and

- (f) An estimate of its value.

(7) Existing Withdrawals or Reservations. The report will refer to all existing withdrawals or reservations within the area proposed for withdrawal. The order making such withdrawal will be identified and a copy thereof will be included in the report as an exhibit. The compatibility of non-compatibility of the existing withdrawal and the proposed Navy withdrawal will be fully discussed and a recommendation will be made as to the method of achieving the appropriate relationship between them. (See paragraph 32.)

(8) Grazing. If grazing is involved, the report will show the identity of the grazing district, the acreage in the grazing area,



number and type of stock now grazing, type or types of stock for which grazing in the area is suitable, and the beginning and ending dates of the grazing seasons. In discussing the rights of possession of a grazing permittee, the total area of a ranch will be shown; the area covered by the permit; the area under the permit within the area proposed for withdrawal; the location and area of the home ranch, line camps, and any other fee-owned land; the use made of the lands within the proposed withdrawal, e.g., winter grazing; the severance damage that will result; and an estimate of the amount of payment that may be made under the procedures set out in paragraphs 27 and 28. A copy of each grazing permit will be included in the report.

(9) Conservation Activities. Information will be provided in the report concerning conservation activities conducted by Federal, state, or local authorities on the land to be withdrawn. These activities include the control of predatory animals and other pests, fire protection, wildlife protection and refuge, preservation of forests and areas of historic, scenic, and cultural significance, and protection of water and similar resources. The extent to which conservation activities will be impeded will be discussed, together with plans to minimize interference with these activities, and plans for cooperation in furtherance thereof.

(10) Recreation. The hearings which preceded the enactment of the Act of Congress approved February 28, 1958 (reference (d)) disclose that consideration was given to recreational uses of public lands with particular emphasis placed on hunting and fishing. Information will be furnished as to the feasibility of permitting recreational uses by the public concurrently with military uses, or use when not actively used by the Navy. This will include pertinent information on the laws concerning seasons for hunting and fishing and plans for cooperation with local authorities for the enforcement of game and conservation laws.

(11) Extent of Withdrawal. Public lands of the United States are subject to entry and use for a wide variety of purposes under the Public Lands Laws. Some of the purposes for which entry is authorized are mineral exploration, location, and development; homesteading; small tract leasing; grazing; and reclamation. If the exclusive use of public lands for defense purposes is required, such land should be withdrawn from all forms of settlement, sale, location, or entry and reserved for the exclusive use of the Navy Department. A review of the legislative history of reference (d) discloses that it was the intent of the Congress that the public lands withdrawn for defense purposes would be available for all uses permitted under the Public Lands Laws which are not incompatible with the military requirements. Therefore, the military requirement for public lands will be analyzed in relation to present and potential uses of such land for private purposes under existing Public Lands Laws to determine the precise private uses that are compatible with the military requirements.



(12) Justification for Entire Area. The legislative history of reference (d) discloses that the Congress took particular notice of the large public land holdings of the military departments. It will therefore be necessary to provide the fullest possible justification in each instance. Where there are applicable criteria, these should be used as the starting point for the development of justification. While there are no established criteria for all types of installations that might require large acreages, there are criteria set forth for the most common types, i.e., for air bombing targets and for gunnery areas. These criteria are contained in references (h) and (i). It is, of course, not always possible to follow criteria exactly for the particular size area may not be available in the required location without unacceptable relocations or the shape may be such as to be unacceptable to the Bureau of Land Management. Thus adjustments from criteria are frequently necessary, but the reasons therefor should be fully explained. While the reason for the withdrawal of the entire area must be complete and convincing, particular attention should be given to fringe or boundary areas. These are the areas that reviewing authorities are most apt to suggest deleting and the probabilities of such suggestions are in proportion to the present potential uses to which such areas are susceptible. Of equal importance of the justification of the area proposed is the justification for the types of entry from which it is proposed to withdraw the lands and the other types of uses which will be denied. Every present and potential use to which the land is susceptible must be listed, together with a statement whether entry or use for that purpose must be denied or may be permitted. If the entry or use must be denied, the specific reason or reasons therefor will be stated. If permitted, but with any limitations, the precise limitations together with the reasons therefor will be stated. It is quite possible in large withdrawals that different portions of the required area will be susceptible to different uses or that certain uses can, from an operational viewpoint, be permitted in certain portions of the area but not in others. Where such factors exist, an appropriate breakdown by area should be made in listing the uses which may be permitted or which must be denied.

(13) Estimated Period of Withdrawal. The legislative history of reference (d) and experience with reviewing authorities under the provisions of this law show that permanent or indefinite withdrawals are not favored. Therefore, recommendations for permanent or indefinite withdrawals will be supported by full justification of the permanent requirement for the area or by a showing that the character of the land will be changed as a result of its use by the Navy, such as permanent contamination or construction of improvements, the scope or character of which would render the land unusable under the Public Lands Laws. It is the intent of Congress to review, periodically, the uses of public lands withdrawn pursuant to reference (d). Drafts of bills to authorize withdrawals, which have been approved by reviewing authorities, provide

for withdrawals for a maximum period of ten years with an option to renew for an additional five years. Periods of withdrawal, recommended by the EPD must be based upon a firm need for a specific purpose rather than a possibility.

(14) Closing and Relocation of Roads, Highways, and Utilities. When a determination has been made that it will be necessary to close or to relocate a railway, utility, canal, ditch, or other similar improvement, the report will contain a statement supporting the need for closing or relocation and a general statement of any proposed method to accomplish such action. The report will contain an estimate of the cost of each necessary relocation of any of the above. The estimate of cost for the relocation of a railway, utility, canal, ditch, or other similar improvement will be obtained through appropriate channels in the EPD, from Government forces or under contract. Where it is necessary to close or relocate a road, highway, or street, the procedures set forth in Chapter 3 will be followed. These instructions are applicable to all roads and the requirements thereof are not limited to access roads or other Navy highway needs. Even though the procedure required by these instructions is followed, estimates of costs must be obtained and submitted as an appendix to the Planning Report. This is necessary so that the cost estimates may be included in the budget estimate where necessary. If it becomes necessary to finance the relocation from funds available for the real property acquisition, the estimates will be used in support thereof.

(15) Easements to Serve Facilities. The requirement for rights-of-way over public lands for utilities, access roads, and similar purposes to serve a Naval activity to be located on the land to be withdrawn will be provided and will be delineated on the map required by subparagraph 6.b(20). Center line descriptions of such rights-of-way, instead of perimeter descriptions, are preferable. Public lands for rights-of-way for these purposes need not be withdrawn, but the procedure stated in subparagraph 30.a will be followed.

(16) Requirement for the Use of Water. Whether the use of water will be necessary to accomplish the purpose requiring the withdrawal will be stated in the report. If water will be required, the estimated total consumption will be stated together with the precise uses thereof. The source of the required water will also be stated together with such information as is necessary to prove the adequacy of the supply. If the supply is not sufficient, a fully detailed plan for discovering or acquiring a sufficient quantity of water will be included in the report. This plan should cite all laws and regulations applicable to the situation.

(17) Contamination of Public Land. If the planned use of the land will result in its contamination, the report will show the type or types of contamination such as unexploded ordnance, radioactivity, or



other residual material which would make the land dangerous or less useful for uses permitted under the Public Lands Laws. Areas which may be contaminated will be delineated on the acquisition map and the type of contamination will be shown. The report will contain a statement of the estimated acreages of these areas. In every case of anticipated contamination, the feasibility of decontamination will be studied. This study will show the type of land involved, the extent and type of the anticipated contamination and the estimated cost of decontamination. Based on this study, the EPD will recommend whether the obligation to decontaminate should be assumed or if the area which will be contaminated should be permanently withdrawn.

(18) Release of Other Navy Controlled Land. The report will state whether the proposed withdrawal will enable the Navy to release or dispose of other land under its control. If land can be released or disposed of, a general description thereof will be provided showing whether public, acquired, or leased land is involved, the annual rental, if applicable, acreage, location, and present Navy use.

(19) Descriptions. Descriptions of areas proposed for withdrawals will be prepared in the manner prescribed in Chapter 3. In most instances public domain lands proposed for withdrawal will have been surveyed under the Public Land Rectangular Survey System. The description of such land will be by a tabular description, i.e., by township, range, and section or part thereof. Where some or all of the lands have not been surveyed under this system, the land should be described by a tabular description based on a prolongation of the Rectangular Survey System. If this is not sufficiently precise, it should be accompanied by a perimeter description.

Where it is necessary to break down the overall area into two or more separate areas, each such separate area should also be described in the manner set forth above. Each of these areas should then be assigned a capital letter beginning with the letter "A" for purposes of identification. The descriptions will show the gross land and water area within the exterior boundaries of the lands proposed for withdrawal and the acreage thereof, the areas within the exterior boundaries to be excepted and the acreage thereof, and the net land and water acreage proposed for withdrawal. These descriptions will be approved by the local office of the Bureau of Land Management and a copy of this approval will be included in the report as an exhibit.

(20) Required Maps. There will be included in the Planning Report a planning map showing, as appropriate, the information detailed in Chapter 3. There will also be included an acquisition map showing the exterior boundaries, breakdown of the area showing different types of uses which may be allowed, the areas which will be contaminated, existing rights-of-way for road and utility purposes, and the location of required rights-of-way. This map will show the townships, ranges and



sections with necessary subdivision thereof, together with the name of the reference meridian clearly indicated on the map and spelled out in full. A vicinity map and a Sectional Aeronautical Chart, if air activities are involved, will also be included in the report in the manner provided for in Chapter 3.

(21) Aerial Photographs. Various Government agencies have made aerial photographs of large sections of the country. Where available, enlargements of aerial views of the real property to be acquired and the immediate vicinity, if desirable, will be obtained and furnished as a part of the Planning Report. Usually these photographs can be obtained from the County Agricultural Agent or the local office of the United States Army Map Service. The most desirable enlargement has been found to be 600 feet to the inch or 660 feet to the inch. The boundaries of the real property to be acquired will be clearly shown on the photographs.

(22) Application for Withdrawal. A proposed application for the withdrawal of the public lands required will be prepared by the EFD and a copy thereof will be included in the report. The proposed application will contain all the information required by the Department of the Interior Regulations (reference (e)). 43 C.F.R. 2351.2(b)(9) of these regulations requires that if the withdrawal will involve the use of water, the application will state whether the using agency has acquired or proposes to acquire rights to the use thereof in conformity with state law and procedures relating to the control, appropriation, use and distribution of water. In all applications filed for the withdrawal of public lands where it is affirmatively stated that it will involve the use of water by the United States, the answer in the application will be as follows:

"The acquisition of rights to the use of water will be in conformity to state laws and procedures relating to the control, appropriation, use and distribution of water insofar as such laws and procedures are applicable to the United States."

#### 7. REQUIRED APPROVALS.

Approvals for withdrawals of public lands as indicated by references (f) and (g) will be obtained for the scope of project as follows and will be obtained as indicated:

##### a. Withdrawals of \$1,000 acres or less

- |                                 |  |
|---------------------------------|--|
| (1) Activity Commanding Officer | <u>Responsible for Obtaining</u><br>EFD/EPA<br>EFD/EPA<br>NAVFACENGCOM |
| (2) Major Claimant              |  |
| (3) Chief of Naval Operations   |  |

b. Withdrawals of More than 800 1000 Acres and Value of More than \$50,000.  
Same as above plus the following:

	Responsible for obtaining
(1) Activity Commanding Officer	EFD/EFA
(2) Major Claimant	EFD/EFA
(3) Chief of Naval Operations	EFD/EFA
(4) Assistant Secretary Navy (I&E)	NAVFACENGCOM
(45) Assistant Deputy Secretary of Defense (I&H)	NAVFACENGCOM

c. Withdrawals of More than 5,000 Acres.  
Same as above plus the following:

	Responsible for obtaining
(1) Legislative Authorization by Congress of United States	NAVFACENGCOM

8. FILING OF APPLICATION.

a. Authorization. After all requisite approvals and legislative authorization have been obtained, NAVFACENGCOM will authorize the EFD to file the application for withdrawal at the appropriate Land Office. Notice of the filing of the application will normally be published in the Federal Register within a short time after filing. The publication of notice shall be reviewed by the EFD to determine if it is fully in accord with the application. If any errors or omissions are noted, the EFD should promptly advise the Land Office and request that a correction notice be published. The EFD should also promptly advise NAVFACENGCOM of the number assigned to the application, the date of filing the notice, the date of its publication in the Federal Register, the Volume and page number of the Federal Register in which the Notice is published and advise that the published Notice has been reviewed and is in accord with the application.

b. Land Offices for Filing Application to Withdraw.

(1) Applications for withdrawal of Public Land will be filed in the Land Office for the area of jurisdiction in which the lands are located as listed in Subpart 1821.2-1(d) of reference (e). If there is no Land Office listed in reference (e) for the area involved, the application will be filed with the Bureau of Land Management, Washington, D.C., 20240, except that applications for lands in North or South Dakota must be filed in the Land Office at Billings, Montana; and, for lands in Kansas or Nebraska, in the Land Office at Santa Fe, New Mexico. If the application for withdrawal must be classified for national security reasons, it will be submitted to the Office of the Secretary of Interior, Department of Interior, Washington, D. C., 20240.

c. Format of Application for Withdrawal. In accordance with Subpart 2351.2(b) of reference (e), no specific format or form of application is prescribed but it must contain specific information and data as prescribed in subparagraphs (1) -(11) thereof.

d. Effect of Filing an Application. The primary effect of filing an application for the withdrawal and reservation of public lands is that it segregates the land. It also sets the date on which private rights in the lands will be determined, for no further rights will vest in the segregated lands. The filing gives notice of the intention of the Department of the Navy to withdraw the lands covered by the application. In addition the filing of an application is a required step in the procedure for withdrawing public lands from entry or other disposal under the Public Lands Laws.

9. ACTION BY ENGINEERING FIELD DIVISION FOLLOWING PUBLICATION OF NOTICE OF PROPOSED WITHDRAWAL.

In a notice of a proposed withdrawal which will not require legislation, the public will normally be advised through publication of the notice in the Federal Register that all persons who wish to submit comments, suggestions, or objections in connection therewith may present their views in writing to the State Director within a stated period (usually 30 days) from the date of publication of the notice. The public is further advised that, if circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced. The EFD will determine if objections have been made to the proposed withdrawal and if a hearing is to be held. In the latter event, he will also ascertain the time and place of the hearing. NAVFACENGCOM will be given timely advice on all of these matters and be provided with copies of all protests filed.

10. HEARINGS ON PROPOSED WITHDRAWALS.

The EFD will be responsible for presenting the Navy's position in any hearings held by the State Director on a proposed withdrawal. He must be fully prepared to justify the Navy's requirement for the land involved, to show why this land best meets the requirement, to justify the denial to the public of such uses of the land as will be denied, to explain what action will be taken with respect to any private rights or privileges in the land, and, insofar as is possible, to meet any objection that may be made. If the assistance of NAVFACENGCOM personnel at the hearing is desired, the EFD should so request in ample time. Following a hearing, the EFD will make a full report thereon to NAVFACENGCOM. Generally speaking, there will be no local hearings on proposed withdrawals which will require legislation. The hearings before the Committees on Interior and Insular Affairs of the Senate and House of Representatives will be the public hearings with respect thereto. Whether a hearing is held or not, the EFD will ascertain when the State Director of the Bureau of Land Management has sent the file on the proposed withdrawal, together with his recommendation, to the Bureau of Land Management, Washington, D. C., 20240. NAVFACENGCOM should be advised of the date and serial number of the letter of the State Director.

11. ISSUANCE OF A PUBLIC LAND ORDER.

Following review and approval within the Department of the Interior a Public Land Order withdrawing and reserving the lands will be issued by the Secretary of the Interior or an Assistant Secretary of the Interior. This will be published in the Federal Register. Frequently, this is the only notice received of the issuance of a Public Land Order. This Order sets forth the rights and responsibilities of the Navy with respect to the lands withdrawn and reserved. It should, therefore, be carefully



studied and a copy thereof should be sent by the EFD to the Commanding Officer of the using activity, the District Commandant, the Major Claimant, Chief of Naval Operations, and NAVFACENGCOM. Sometimes a Public Land Order will contain provisions which require implementation. In this event the EFD will promptly submit comments and recommendations to NAVFACENGCOM on proposed action with respect thereto.

12. EFFECT OF A PUBLIC LAND ORDER.

A Public Land Order reserving public lands to the use of the Department of the Navy withdraws such lands from some or all forms of entry under the Public Lands Laws and will thereby permanently segregate the lands with respect to such forms of entry. The publication of a Public Land Order is notice to all the world that the lands covered thereby have been appropriated to the use of the United States. The Public Land Order, in addition, transfers the administrative jurisdiction over such lands to the Department of the Navy, except insofar as certain jurisdiction may be retained by the Department of the Interior as specifically set out in the Public Land Order. Public lands having been withdrawn and reserved for Naval uses cease to be a part of the public domain and become subject to the administration and management of the Navy Department except insofar as it is reserved in the Public Land Order.

13. DRAFTING OF PROPOSED LEGISLATION.

With respect to a proposed withdrawal which will require legislation, following the filing of the application by the EFD with the State Director, NAVFACENGCOM will draft a bill covering the proposed withdrawal. This draft will be submitted to the Office of Legislative Affairs, which office will then take the necessary action to have the proposed bill presented to the Congress as a part of the Department of Defense Legislative Program. That Office is responsible for obtaining the appropriate witnesses who will support the proposal before the Congress.

14. EFFECT OF ACT OF CONGRESS WITHDRAWING PUBLIC LANDS.

The enactment of an Act of Congress withdrawing public lands will have the same effect as the issuance of a Public Land Order by the Secretary of the Interior (paragraph 20). It will set forth the rights and responsibilities of the Navy with respect to the lands withdrawn and reserved. It will also determine the period of the withdrawal and within that time the withdrawal cannot be revoked except by another Act of Congress or in the manner set forth in the Act. No Public Land Order will be issued when the lands are withdrawn by an Act of Congress.

15. LANDS IN THE OUTER CONTINENTAL SHELF.

The Act of Congress of February 28, 1958, reference (j) states that the term "public land" shall be deemed to include, without limiting the meaning thereof, Federal lands and waters of the Outer Continental Shelf, as defined in Section 2 of the Outer Continental Shelf Lands Act (reference (e)). This would apply to areas seaward of a line three geographical miles distant from the coast line of a State except where the boundary of a state extended beyond this limit when it became a member of the Union. These areas are subject to mineral leasing by the Department of the Interior under the Outer Continental Shelf Lands Act. Mineral operations under such mineral leases may interfere with Naval activities in or under the water of or in the air space above these areas. The restriction of mineral leasing is therefore an element in the exercise of control in the Outer Continental Shelf Area. When establishment of Waring Areas and Defensive Sea Areas involves the restriction of mineral leasing in lands of the Outer Continental Shelf, the action required by paragraphs 14 and 15 will be taken by the EFD.

16. RESTRICTING LANDS IN THE OUTER CONTINENTAL SHELF.

When Naval requirements necessitate restricting lands in the Outer Continental Shelf, the action will be handled in a manner similar to the withdrawal of public lands. The EFD will submit appropriate recommendations to NAVFACENGCOM via the Commander of the appropriate Sea Frontier. NAVFACENGCOM will thereafter obtain the approval of the Major Claimant, Chief of Naval Operations, the Secretary of the Navy, and the Secretary of Defense. If more than 5,000 acres are involved, legislation will be required. In this case NAVFACENGCOM will draft appropriate legislation and take the action necessary to have it submitted to the Congress. It is noted that restriction of lands in the Outer Continental Shelf affects only mineral operations in these areas and has no application whatsoever to other rights. The rights of navigation in the area is not affected in any degree.

17. PLANNING FOR RESTRICTIONS OF THE OUTER CONTINENTAL SHELF.

A proposal to restrict lands in the Outer Continental Shelf must be supported as fully as withdrawals from the public domain. Therefore, in all cases involving the restriction of more than 5,000 acres, a planning report will be prepared which will accompany the recommendations of the EFD or will include them. The report will follow the format required by Chapter 3. The report will contain all the information necessary to support the proposed legislation before the Congress. This report will include an appropriate description of the area; a map; a statement of the requirement necessitating restricting the area; justification of the entire area based on appropriate criteria; a statement as to whether the area, or any part thereof, has been offered for mineral leasing; the date or dates of such offers; a list of all outstanding leases or appli-

cations for leases within the area together with the dates thereof, the names and addresses of the lessees or applicants, and descriptions of areas covered by the leases or applications; information as to the uses made of the area such as fishing, recreation, and shipping lanes; and such other information as may be deemed pertinent. In those cases where less than 5,000 acres are involved, the same type of information will be required; however, it may be submitted in letter form if such is more convenient and is considered advisable.

18. APPLICATIONS FOR RESTRICTIONS.

When all necessary departmental clearances have been obtained and prior to submission of legislation to the Congress, if such is required, NAVFACENGCOM will prepare an application for the restriction of lands in the Outer Continental Shelf from mineral leasing and submit such application to the Bureau of Land Management.

19. RIGHTS IN PUBLIC LANDS PRIOR TO WITHDRAWAL.

The Department of the Navy has no rights to use public domain lands greater than those which every citizen possesses except by permission of the Department of the Interior or pursuant to an Act of Congress. The filing of an application for withdrawal confers no right to use the lands covered thereby. Unless there is other existing authority, no use should be made of such lands for such action could seriously prejudice the obtaining of the requested Public Land Order or the enactment of the necessary legislation. Public domain lands are open to use by the public, subject to existing private rights, and there is no objection to personnel of the Department entering such lands for purposes of inspecting or surveying them.

20. ACQUISITION OF PRIVATE RIGHTS.

An Act of Congress or a Public Land Order withdrawing lands for use by the Department of the Navy will either by the description of the land or by its terms, exclude all lands within the overall area whose title has passed from the Government. These will include all lands, including mining claims, patented to individuals, lands granted to railroads, and state school lands. These state school lands are generally sections 16 and 36 in a surveyed township. It is noted, however, that title to these sections does not vest in the state until they are surveyed and such survey is approved by the Bureau of Land Management. Acquisition of such patented lands, or of the use thereof, will be accomplished in Chapter 13, as appropriate. The Act of Congress or the Public Land Order withdrawing land will make such withdrawal subject to valid existing rights. If these existing rights interfere with the Navy's use of the lands, it will be necessary to acquire such rights through the payment of just compensation. These rights will be acquired pursuant to the procedures hereinafter set forth in paragraphs 21 through 26.



21. EXCHANGE OF LAND FOR PUBLIC LANDS.

In areas where there are large holdings of public lands, frequently the owner of the lands required by the Navy will suggest the exchange of his lands for lands in the public domain outside of the area needed by the Navy. There is no authority in the Navy Department to consummate such exchanges. However, the Department of the Interior does have such authority under the Taylor Grazing Act. It is a matter of discretion with that Department whether to entertain such proposals from private parties. It must, however, act upon such proposals from a state. As such exchanges are a matter under the cognizance of another Department, they should neither be encouraged nor discouraged. Reasonable assistance may be given to the party making the proposal, but under no circumstances should it be presented as a proposal of this Department nor should the Navy be concerned with the ultimate decision made by the Department of the Interior. It is noted that the Department of the Interior, because of the administrative costs involved, generally discourages exchange proposals from private parties. It is further noted that in cases where exchange proposals are entertained the procedures are time consuming. Where large acreages are involved, the consummation of an exchange may take several years. Until a final decision is reached by the Department of the Interior, provision must be made for the Navy to have the right to use the land proposed for exchange. This may be accomplished by a negotiated agreement which will grant the use of land to the Government without cost and will be valued as of the date of the Government's taking possession, in the event that the exchange is not consummated. If an agreement cannot be negotiated, the lands should be included in a condemnation proceeding and an order of possession should be obtained from the Court. No Declaration of Taking will be filed in this situation as this would vest title in the Government and the former owner would have nothing to exchange. If, of course, an order of possession cannot be obtained, the filing of a Declaration of Taking would then be necessary. Because of the possibility of exchanges for public land and because such lands will become public lands when exchanged, legislation and Public Land Orders should be so worded that they will include lands within the exterior boundaries of the lands withdrawn which are or may hereafter become public lands. The wording of the application for withdrawal should therefore anticipate this ultimate result.

22. ACQUISITION OF UNPATENTED MINING CLAIMS.

Of the various possible valid existing rights which may inhere in the public lands of the United States, the most important is the unpatented mining claim. While the title to lands covered by an unpatented mining claim remains in the United States, such a claim is an

interest in real property with all the characteristics of other interests in real property. It may be sold or otherwise alienated and the title thereto will pass to the heirs or devisees of the owner on his death. It is presumed to be a valid claim, if appropriate affidavits of assessment work have been currently filed, until such time as it is determined to be invalid by appropriate administrative procedures of the Department of the Interior. Prior to initiating action to acquire unpatented mining claims, the EPD will assemble a list of all such claims within the area withdrawn or proposed for withdrawal. Mining claims on which no proof of assessment work has been filed for the last year required, unless such work was excused pursuant to law or regulation, will be considered invalid and no further action will be taken with respect thereto. The following information will be developed as to all other mining claims or groups of claims:

- a. The locator or present owner of the claim and his address.
- b. A description of the claim as obtained from the local records. A survey for this purpose is not authorized.
- c. A statement showing whether the claim is being worked only to the extent of the required assessment work, is being actively developed, or is being commercially exploited.
- d. An opinion as to whether the claim is valid or is of doubtful validity.
- e. An estimate of the value to the claim based on observation and existing records.

#### 23. POSSESSORY INTERESTS.

a. Definition of Possessory Interests. "Possessory Interests" are those rights of possession and enjoyment of unpatented mining claims held under the provisions of Title 30 U.S.C. in accordance with local laws and customs.

b. Acquisition of Possessory Interests. Acquisition of possessory interests will not be initiated unless the mining claim is considered to be valid as described by paragraph 23.a above. If possessory interests can be acquired by quitclaim deeds, or by lease for a total consideration of not in excess of \$100 for each unpatented mining claim, it is usually in the best interest of the Government to acquire these interests without incurring the administrative expense or expanding the time involved in obtaining the review of the Department of Interior. The exercise of the authority delegated in paragraph 23.c must be carefully administered. The amounts to be paid for possessory interests should not exceed the combined estimated amounts of (1) the cost to the Government of determining their validity, and (2) the cost of appraisals, title evidence, assays, publications of notices, and other expenses. The \$100 limitation should be considered as an upper limit rather than the normal amount to be paid.

c. Procedures for Acquisition of Possessory Interests. When the EFD has been authorized to proceed with the acquisition of private interests in public lands, the EFD will, unless requirements of possession dictate otherwise, commence negotiations with the owners of all mining claims in which there were valid possessory interests at the time the lands were segregated. Whenever possible, if purchase is authorized, the EFD will obtain a quitclaim deed from the owners for a sum not to exceed \$100 for each unpatented mining claim. Tenants, parties in possession, and others having an interest in the claims, will execute or join in the execution of quitclaim deeds. The use of an "Agreement for Purchase of Real Property" is not required. Quitclaim deeds shall be prepared in the format shown on Appendix 15-A. If there is serious objection by the owners to the permanent conveyance of their interests and the acquisition of a lesser interest is warranted by the specific circumstances, such as a temporary withdrawal with no contamination or permanent construction contemplated, substantial savings to the Government, or other material considerations, the following clause may be inserted in the quitclaim deed: "It is hereby understood and agreed that whenever the land in which the interest aforesaid is held is returned to the public domain, said interest shall revert to and revert in the said party of the first part, his heirs, devisees, or successors, in interest." If the owner is unwilling to grant such a quitclaim deed, the use of the possessory interest may be acquired by lease. The manner of execution should satisfy the requirements of local law to make the instrument eligible for recordation. Payments shall be made on the basis of properly certified vouchers (Standard Form 1034). The quitclaim deeds shall be recorded in the Land Records Office of the County in which the claim is located and distribution made as follows:

Original	EFD Files
Conformed Copy	NRFC on Daily Report of Obligations
Conformed Copy	NAVFACEGCOM (Code 20R)

The funding and payment procedures including requests for checks will be in accordance with procedures prescribed in Chapter 7 of this publication.

d. Procedures for Leasing Possessory Interests. As indicated in paragraph 23.c, if the owner is unwilling to grant a quitclaim deed, the EFD shall proceed with negotiations with the owner to obtain a firm term lease for a term commensurate with the period of requirement and at a lump sum rental, payable at the end of the first fiscal year. The lump sum rental payment shall not exceed \$100 for each unpatented mining claim. Tenants, parties in possession, and others who have an



interest in the claims, shall execute or join in the execution of the leases. Leases shall be prepared on "Leases for Government use of Mining Interests" (Appendix 15-3). If the EPD determines that the specific circumstances require that the instrument be recorded, the manner of execution must satisfy the requirements of local law to make it eligible for recordation. If the space allowed on the form for execution by the lessor and spouse is inadequate, or if the owner is a corporation, partnership, or other entity requiring more space, an additional page may be attached to provide sufficient space for signatures, notary's acknowledgment, and appropriate certificate, if a corporation. Leases shall be distributed as provided in Chapter 13 of this publication.

e. Disclaimers From Parties Without Interest. The EPD shall obtain disclaimers, without consideration, from tenants or other parties in possession of unpatented mining claims who do not claim an interest therein. Disclaimers shall be prepared in a form satisfactory to the EPD Counsel and executed disclaimers shall be retained in the files of the EPD.

f. Validity of Unpatented Mining Claims. All unpatented mining claims on public lands withdrawn for use by the Department of the Navy, in which the possessory interest cannot be acquired by the methods set forth in paragraphs 23.c, d, and e will be acquired by condemnation of a leasehold or full outstanding interest in the property as appropriate. However, the general rule that Government funds may be paid only to compensate owners of a compensable interest applies. The acquisition of possessory interests is an exception to this rule based on practical considerations. Thus, before unpatented mining claims, as distinct from possessory interests are leased or purchased, a determination of the validity of such claims must be made. The Department of the Interior as the agency of the Federal Government having jurisdiction over the lands in the public domain has the ultimate authority to render a decision on the validity of private rights in these public lands. The only manner in which an unpatented mining claim may be found to be invalid is by such a finding being made by the Department of the Interior pursuant to its appropriate administrative procedures. Two distinct steps, however, necessarily precede the making of such a finding. First, there must be an examination of the claim and an assembling of the evidence to support the claim of invalidity. Secondly, there must be a presentation of evidence and examination of witnesses at a hearing held for the purpose. The holding of the hearing and the rendering of the final decision as to the validity of the claim is necessarily the function of the Department of the Interior. The first two steps may be performed by any qualified person.

g. Adverse Proceedings. Unpatented mining claims are assumed to be valid until determined to be otherwise. Hearings held by the Department of the Interior (Bureau of Land Management) on the validity of a claim are contests between two interest parties, one asserting that the claim is valid and the other that it is invalid. It can be presumed that the owner of the claim will, if possible, support its validity, or, at least, will not contend that it is invalid. This being the case, there will be no basis for holding a hearing unless the Navy is able to assemble evidence tending to show that the claim is invalid. If the evidence assembled by or on behalf of the Navy shows the claim to be valid, it should be so determined and action should then be taken to acquire it.

h. Definition of Validity. An unpatented mining claim is valid if the locator thereof or his successor in interest, has the rights of possession and enjoyment as set forth in 30 U.S.C. 26. These rights depend upon two elements, discovery, 30 U.S.C. 23, and the performance of assessment work, 30 U.S.C. 28-28c. No mineral rights are acquired in public lands without discovery of a valuable mineral. Therefore, to be valid, a mining claim must be based on the discovery of mineral which gives reasonable evidence of the fact that there is a vein or lode carrying the precious mineral and it is such a discovery as would justify a person of ordinary prudence in the further expenditure of time and means in the effort to develop a paying mine. The amount of assessment work required depends upon local law and regulations, but may not be less than \$100 worth of labor performed or improvements made during each year.

i. Examination of Unpatented Mining Claims. It has been the practice of the Navy to obtain the services of the Bureau of Land Management to examine unpatented mining claims and to assemble evidence as to their validity. This practice should be followed in all cases where there are no strong reasons to the contrary, as the Bureau of Land Management is well staffed to perform this function which it frequently must do on its own behalf. Additionally, the Department of the Interior (Office of the Solicitor) will not ordinarily represent the Navy in an adverse proceeding if its personnel have not examined the claim and assembled the evidence. Therefore, if a decision is made to have parties other than the Bureau of Land Management examine unpatented mining claims, the decision must, in part, be based on the availability of qualified personnel to represent the Navy in possible adverse proceedings.

j. Agreement for Examination of Claims. In order to obtain the services of the Bureau of Land Management to examine unpatented mining claims, an agreement will be entered into between the EFD and the State Director, Bureau of Land Management. This agreement will provide for the Bureau of Land Management to examine the claims and to assemble evidence as to their validity, to make recommendations as to each sepa-

rate claim, either that it is valid or that adverse proceedings should be conducted against it, and in the latter instance, to take appropriate action to institute such proceedings. The agreement will also provide for a valuation of the claims which can be used as a basis for lease or purchase. Under the agreement the Navy will reimburse the Bureau of Land Management for its costs upon submission of a Standard Form 1080. Reimbursement may be on an incremental basis if the Bureau of Land Management so desires.

k. Timing of Agreement With the Bureau of Land Management. The timing for entering into agreements for the examination of unpatented mining claims is of considerable importance. If no action is taken in this regard until the withdrawal is accomplished, the ability to use the withdrawn land may be delayed for an extended period. When the requirement for use is urgent, the possession of private interests will generally be obtained through the institution of condemnation proceedings. However, in such proceedings, the Court may not, in its discretion, grant possession without the filing of a Declaration of Taking. If a Declaration of Taking is filed there must be some reasonable basis for the deposit of just compensation. Moreover, it is preferable not to include invalid claims in a condemnation proceeding. At the time of the filing of an application for withdrawal, the EFD will advise the State Director, Bureau of Land Management, of the need for determining the private rights existing in the public lands covered thereby. In some instances, it may be possible to get the Bureau of Land Management to budget for this examination. Under any circumstances, the EFD must be guided by its own discretion in obtaining the examination of unpatented mining claims in a timely fashion so that possession of the lands will not be delayed.

24. DELEGATION OF AUTHORITY.

a. The EFD is hereby authorized to acquire, by purchase or lease, possessory interests in unpatented mining claims on public domain lands withdrawn, or in the process of being withdrawn, for Navy use, subject to the limitations as set forth in this Chapter. This delegation of authority is subject, however, to all requisite approvals for the required real estate action being obtained and funds being available. The authority delegated herein may be redelegated.

b. The EFD is hereby delegated authority to enter into contracts or interagency agreements for the examination and/or appraisal of unpatented mining claims. The authority delegated herein is subject to the availability of funds. The authority hereby delegated may be redelegated.

c. The EFD is hereby delegated authority, on the basis of appropriate evidence, to determine that unpatented mining claims are valid or to take all appropriate action to cause adverse proceedings to be instituted and prosecuted. The authority delegated herein may be redelegated.



25. REPRESENTATION IN ADVERSE PROCEEDINGS.

Agreements with the Bureau of Land Management for the examination and appraisal of unpatented mining claims will not include provisions for representing the Navy in adverse proceedings as that is a function of the Office of the Solicitor in the Department of the Interior. Whenever it appears that certain unpatented mining claims are invalid and adverse proceedings should be instituted and the evidence pointing to invalidity has been gathered by the Bureau of Land Management, the EFD will forward appropriate recommendations to NAVFACENCOM to enter into an agreement with the Office of the Solicitor, Department of the Interior, to represent the Navy in the proposed adverse proceedings. This agreement will also provide for reimbursement to the Department of the Interior, for its costs on submission of a Standard Form 1080. In the event the examination of unpatented mining claims and the gathering of evidence indicating their validity has been obtained from a source other than the Bureau of Land Management, the Counsel for the EFD will represent the Navy in the adverse proceeding.

26. EXTINGUISHMENT OF SMALL TRACT LEASES.

Upon withdrawal of public lands encumbered with small tract leases, the EFD will immediately seek the advice of the local office of the Bureau of Land Management as to which of such leases are at that time in effect. The EFD shall thereupon seek to acquire all right, title, and interest therein through negotiations. If no improvements have been placed on the land, just compensation will ordinarily be the cost of the filing plus the cost of survey, if such has been made. If negotiations are not successful, recommendations as to condemnation should be forwarded to NAVFACENCOM. Even if only a leasehold interest is to be obtained in other private rights pertaining to the lands withdrawn, all outstanding right, title, and interest to the small tract leases should ordinarily be acquired as the cost of administering leases on these minor interests would in most cases far outweigh their full value.

27. GRAZING PERMITS.

Grazing permits issued by the Bureau of Land Management do not grant an interest in real property and are therefore not compensable as such. However, a section of the Taylor Grazing Act, 43 U.S. C. 315q., permits payment for losses suffered by their cancellation. This section provides as follows:

"315q. Withdrawal of lands for war or national defense purposes; payment for cancellation of permits or licenses. Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding permits or licenses have been or will be canceled because of such use shall be paid out of the funds appropriated

or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States.

(July 9, 1942, ch. 500, 56 Stat. 654; May 28, 1948, ch. 353, § 1, 62 Stat. 277)."

28. PAYMENT FOR LOSSES UNDER GRAZING PERMITS.

Every effort shall be made to continue grazing permits on the lands withdrawn for Navy use. However, if such use is incompatible with the defense requirement, the State Director of the Bureau of Land Management will be requested to cancel such permits. If such cancellation results in losses being suffered by the holder of the permits, the EPD will negotiate an agreement with the permittee covering the losses incurred in providing for reimbursement by the Government. Thereafter, the agreement will be submitted to NAVFACENGCOM with full justification. Action will then be taken to obtain a determination from the Secretary that the amount of reimbursement is fair and reasonable. It is noted that the reimbursement can only cover the period provided for under the existing permit and cannot cover prospective losses based on the assumption that further permits would have been issued. When the Secretary's finding has been made, the agreement will be executed in NAVFACENGCOM or the EPD will be authorized to execute it. Thereafter, distribution will be made as follows:

Original	EPD Files
Signed Copy	Permittee
Conformed Copy	NRFC (with Daily Report of Obligations)
Conformed Copies	As required for local fiscal accounting

29. OTHER METHODS OF OBTAINING USE OF PUBLIC LANDS.

As stated hereinabove, the effects of a Public Land Order or of legislation withdrawing lands are to segregate them, to give notice to the world that the lands are appropriated to the use of the United States, and to transfer administrative jurisdiction. Public lands required by the Navy may already be withdrawn and reserved to some other agency of the Federal Government. All or part of the administrative jurisdiction

over the public lands required may be obtained through an agreement with the department or agency for whom the lands have already been withdrawn and reserved. Segregation may also be accomplished through appropriation of the lands to the use of the Navy by the construction of improvements thereon. Actual notice of this appropriation will be given by the existence of the improvements on the lands. In view of the above, other methods, which should be considered when the use of public lands is required, fall generally into the three following categories:

- a. Notation on the tract and plat books of the Bureau of Land Management,
- b. Permit from the Bureau of Land Management, and
- c. Agreement with the department or agency for which the required lands are presently withdrawn.

30. USE OF PUBLIC LANDS FOR ROADS, PIPELINES, AND UTILITIES.

When a requirement exists for a road, pipeline, electric transmission line, telephone line, or other utility line across public lands, the necessary right-of-way therefor may be appropriated under the principles set forth by the Department of the Interior in the instructions of January 13, 1916 (44 L.D. 513) (Appendix 15-C). Such appropriation of the use of the lands is permitted as a necessary incident to effectuating the will of Congress as expressed in the Public Law appropriating the funds for the required facility.

a. Procedure for Requesting Right-of-Way Over Public Lands. When a right-of-way for a road or utility line is required, the State Director of the Bureau of Land Management will be so advised. He will be provided with a description of the land needed and will be advised of the required use, the Public Law authorizing the construction or appropriating funds therefor, and the date on which it is intended to commence construction. He will be requested to grant permission for the necessary construction to commence, to note the right-of-way on his tract and plat books, and to advise of any private or other rights within the right-of-way which would interfere with it. The letter to the State Director will state that the proposed appropriation is requested pursuant to the principles of the Department of the Interior instructions of January 13, 1916 (44 L.D. 513). The letter will also advise that when the road or utility line is constructed an as-built description will be furnished to him.

b. Effect of Appropriation. Appropriation under the principles of 44 L.D. 513 will be used in all cases to which it is applicable. The procedure is simpler and quicker than the procedures for obtaining a withdrawal; it affects only the actual land involved; and it gives the Navy an irrevocable right in the right-of-way for so long as it is required or used. It is superior to a Public Land Order as such an Order can be revoked at any time. The notation of the right-of-way on the tract and plat books will insure that, in any patent issued subsequently



to the public lands affected, the right-of-way will be reserved to the Government. It is for this reason that it is essential that a precise as-built description be furnished to the State Director as soon as it is available.

31. USE OF LANDS UNDER PERMIT.

A permit from the Bureau of Land Management will not segregate public lands, will not give notice of appropriation, nor will it confer administrative jurisdiction. However, if the use required by the Navy is of a temporary nature, is intermittent, or will not interfere with the rights of the public under the public land laws to any significant degree, these conditions may be unnecessary and a permit may be appropriate. The State Director has authority to issue permits for a period not exceeding five years. Application for a permit may be for a Special Land Use Permit (Form 4-972) or a form may be devised by the EFD to better suit the special circumstances of the case. Special Land Use Permits are issued pursuant to the regulations contained in 43 C.F.R. 2920 and the provisions thereof should be followed in applying for those permits. Under these regulations such permits are "revocable in the discretion of the authorized officer, at any time, upon notice, if in his judgment the lands should be devoted to another use". This provision should, of course, be considered in the decision to apply for a permit, however, the risk involved is more apparent than real. Federal use would almost invariably take precedence over a State or private use. Under any circumstances such a revocation could be appealed to higher authority. Where Government funds have been expended on construction with the approval of the Department of the Interior, the permit is for all practical purposes irrevocable.

a. Construction Under a Permit. In cases where the use of public lands under permit is being considered, the fact that construction thereon is contemplated supports the use of a permit rather than inhibits it. The expenditure of Government funds on the land will have the effect of appropriating them to the use of the United States and will segregate them. These two results together with the permission of the Department of the Interior as evidenced by the permit, will frequently give the Navy all the interests it requires. It will not, however, give the Navy any administrative jurisdiction over the lands.

32. LANDS WITHDRAWN AND RESERVED FOR ANOTHER AGENCY.

Whenever in the planning for the use of public lands it becomes known that the lands, or some of them, are already withdrawn for the use of some other Federal agency, consideration should be given to the question of whether a withdrawal and reservation to the Navy is necessary. It is possible that an agreement with the agency having jurisdiction will fully satisfy the requirements of the Navy. The fact that the

construction of permanent improvement may be involved is not pertinent to this question. As the lands are already withdrawn, they are already effectively segregated from the operation of the Public Lands Laws. However, in this connection, it must be determined that the lands are actually withdrawn from all forms of entry which would affect use by the Navy. If this condition is met and a satisfactory agreement can be reached with the agency having jurisdiction, the Bureau of Land Management must be requested to make suitable notations of the Navy's interest in the lands upon its tract and plat books and to acknowledge that such has been done. This latter is most important to insure that upon a revocation of the withdrawal the interest of the Navy is not overlooked. The authority of the EPD to enter into such agreements for the use of public lands should be considered as coming within the authority delegated to him by Chapter 4.

33. MANAGEMENT OF WITHDRAWN PUBLIC LANDS BY THE NAVY DEPARTMENT.

Public lands which have been withdrawn and reserved for Naval uses, cease to be a part of the public domain and become subject to the administration and management of the Navy Department. The Public Land Order or legislation withdrawing the lands may retain or reserve certain elements of administrative or management in the Department of the Interior. However, except for such elements as are reserved and only to the extent thereof, the full administrative jurisdiction over the lands passes with the withdrawal and reservation. Withdrawn public lands will be administered and managed in the same manner as acquired lands. Licenses and permits will be issued and easements granted over withdrawn public lands following the procedures set forth in Chapters 20, 21, and 22, except to the extent that such action would be inconsistent with jurisdiction reserved to the Department of the Interior in the specific case.

34. AUTHORITY TO REVOKE WITHDRAWALS.

Prior to enactment of the Pickett Act of June 25, 1910, the right of the President to restore reserved public lands to the public domain was often challenged. However, that Act expressly authorizes him to revoke orders of withdrawal or reservation made pursuant thereto. By Executive Order 9337 of April 24, 1943 and Executive Order 10355 of May 26, 1952 which superseded it, this authority of the President was delegated to the Secretary of Interior. Pursuant to Executive Order 10355, the Secretary of the Interior has issued procedural regulations governing the restoration of lands to the public domain. These are set forth in 43 C.F.R. 2370-2374.2.

35. DISPOSAL OF LANDS WITHDRAWN FROM PUBLIC DOMAIN.

a. Return to the Public Domain. After the lands, which were withdrawn from the public domain for use by the Department of the Navy, have

served the intended purpose and are no longer required, it should be returned to the public domain. If, however, substantial improvements have been constructed or the lands have been contaminated, it may be determined not suitable for return. In the latter case, the property must be reported as excess to the General Services Administration for disposal by that Administration.

b. Required Approvals. Upon receipt of a Report of Excess Real Property involving public lands, the property shall be screened to determine if there are any other Department of Defense requirements and necessary approvals obtained in accordance with provisions of Chapter 23 of this publication.

c. Suitability for Return to the Public Domain. One significant variable in a disposal project involving public land is whether such lands are suitable for return to the public domain. This determination will ultimately be made by the Bureau of Land Management, with the concurrence of the General Services Administration if it is not returnable. However, the EFD will make a preliminary determination of this matter whenever action is initiated to obtain approvals for the disposal of property involving public lands. In reaching a preliminary determination, the EFD should consult with the State Director of the Bureau of Land Management. If this preliminary determination is that the lands are not suitable for return to the public domain, they will, for the purpose of obtaining approvals, be considered as if they were acquired lands.

d. Responsibility of the General Services Administration. The Federal Property and Administrative Services Act of 1949 (63 Stat. 377; 40 U.S.C. 472), as amended, defines the word "property" as used in the Act, in part, as follows:

"The term 'property' means any interest in property except.... lands withdrawn or reserved from public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general Public Lands Laws because such lands are substantially changed in character by improvements or otherwise; ....."

As a result of this definition, the General Services Administration has certain responsibilities with regard to the disposal of reserved public lands. Procedures relating to these responsibilities are set forth in GSA Federal Property Management Regulations 101-47-206-6.

e. Filing of Notice of Intention to Relinquish. When all necessary approvals have been obtained for the disposal of property including withdrawn or reserved lands, the EFD will file the approved notice of



intention to relinquish such lands in the proper Land Office in the state in which the lands are located. For lands in states in which there is no Land Office, notices shall be filed with the Bureau of Land Management, Washington, D. C., 20340, except that notices for lands in North Dakota or South Dakota shall be filed in the Land Office at Billings, Montana, notices of lands in Kansas or Nebraska shall be filed in the Land Office at Cheyenne, Wyoming, and for lands in Oklahoma, in the Land office at Santa Fe, New Mexico. A copy of this notice of intention to relinquish shall be sent to the regional office of the General Services Administration for the region in which the lands are located.

f. Report of Excess Real Property. When the authorized officer of the Bureau of Land Management has determined that the withdrawn or reserved lands to be relinquished are not suitable for return to the public domain and has so advised the EPD, the EPD will report the property as excess to the General Services Administration in accordance with 43 C.F.R. 2374.1 and GSA Regulations 101-47.202.6. If the preliminary determination of the EPD was that the lands were suitable for return to the public domain, the EPD must re-examine the approvals for the disposal project to ascertain if, in the light of the determination by the Bureau of Land Management, Department of Defense approval and a Report to the Armed Services Committees are required and whether such action has been taken.

APPENDIX 15-A

QUITCLAIM

THIS INSTRUMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, between the undersigned, hereinafter referred to as the party of the first part, and the UNITED STATES OF AMERICA, hereinafter referred to as the GOVERNMENT,

WITNESSETH: That the party of the first part, in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in hand paid by the GOVERNMENT, the receipt of which is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim, unto the GOVERNMENT, and its assigns, forever, without any warranty express or implied, all right, title and interest which said party of the first part has in and to the following described interest, to-wit: (Show State, County, name of claim, mining district, Section, Township and ranges, and cite recording or filing date)

IN WITNESS WHEREOF, the party of the first part has executed this quitclaim the day and year first above written.

WITNESS:

NAVY IDENTIFICATION AND ACCOUNTING DATA				
NAME AND ADDRESS OF USING ACTIVITY				
COST		APPROPRIATION CHARACTER		
\$				
SUBJECT CLASS	EXPENDITURE ACCT. NO.	ACTIVITY ACCTS. NO.	ALLOTMENT NO.	PARCEL NO.
				N-

9-44287

# APPENDIX 15-B

## LEASE FOR GOVERNMENT USE OF MINING INTERESTS

LEASE between

hereinafter called the "Lessor," and the United States of America, hereinafter called the "Government."

THE LESSOR, for his heirs, executors, administrators, successors, and assigns, hereby leases to the Government, for Government use, the following described interest, being an unpatented mining claim, lode, or tunnel right, and appurtenant thereto belonging, in accordance with the terms, conditions, and general provisions set forth on this page, AND ON THE REVERSE SIDE HEREOF.

### 1. LOCATION AND DESCRIPTION OF PROPERTY:

2. TERM: This lease shall be for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_ provided that unless and until the Government shall give notice in accordance with provision 10 hereof, this lease shall remain in force thereafter from year to year without further notice so long as the land is required for Governmental purposes.

3. PAYMENT: The Government shall pay the Lessor \_\_\_\_\_ \$ \_\_\_\_\_ as rental for the above described interest for the entire period the land covered thereby will be required for Governmental purposes, payable on the 30th day of June following the date of this lease, upon receipt by the Local Government Representative of an invoice in triplicate, bearing the following certification executed by the Lessor, "I hereby certify that the above bill is correct and just and payment therefor has not been received."

### 4. EXECUTION BY LESSOR (Refer to Item 4 of Instructions)

### 5. EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT

THE UNITED STATES OF AMERICA

(Continuing Section)		(Part)	(Part)
6. PARTY IDENTIFICATION AND ACCOUNTING DATA			
6A. NAME AND ADDRESS OF LEASEE (Activity)		6B. LOCAL GOVERNMENT REPRESENTATIVE (Name and Address)	
6C. DATE	6D. APPROVING SIGNATURE	6E. PHONE NO.	
6F. MINING CLASS	6G. CONTRACTING AGENCY NO.	6H. ACTIVITY SIGNATURE NO.	6I. ALLOTMENT NO.
		6J. CONTRACT NO.	



## APPENDIX 15-B (continued)

### 7. GENERAL PROVISIONS

**8. FIXTURES AND IMPROVEMENTS:** The Government shall have the right during the existence of this lease to attach fixtures, and erect structures or signs upon the premises in which the interest hereby leased exists, which fixtures and structures, or signs shall be and remain the property of the Government.

**9. RESTORATION:** The Government shall have no obligation whatsoever for restoration of the premises in which said interest exists.

**10. TITLE:** It is mutually agreed and understood that the Government by entering into the terms of this lease does not intend to, nor does it, validate or approve the title or possessory rights of the Lessor in and to the above mentioned unpatented mining claim, lode, vein, or tunnel right.

**11. TERMINATION:** The Government may terminate this lease at any time by giving thirty (30) days written notice to the Lessor.

**12. COVENANT AGAINST CONTINGENT FEES:** The Lessor warrants that no person or selling agency has been employed or retained

to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease rental or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

**13. OFFICIALS NOT TO BENEFIT:** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

**14. JUSTIFICATION FOR NEGOTIATION:** This lease is entered into as a result of negotiation pursuant to the authority of 30 U.S.C. 2204(a)(3) and any necessary determinations and findings, or other supporting statement of justification, prescribed by that act have been made.

### DIRECTIONS FOR PREPARATION

**IDENTIFICATION OF LESSOR:** The Lessor or Lessors shall each be identified by name in the opening paragraph of the Lease, as follows:

If the Lessor is unmarried, as

John Doe, unmarried

If the Lessor is married, or the property is owned by husband and wife, as

John Doe and Mary Doe; his wife

If the Lessor is a partnership, the names of all the members of the partnership must be included in the opening paragraph, with the names of their wives, if any; except in those states in which a partnership is authorized by statute to hold and convey title to real property. In the latter case the name of the partnership only need be set forth.

If the Lessor is a private corporation, as

XYZ, a corporation organized and doing business under the laws of \_\_\_\_\_

If the Lessor is a public corporation, the name of the public corporation is to be set forth.

Wherever possible the name of the Lessor should be the same as appears in the title evidence.

**ITEM 1 - LOCATION AND DESCRIPTION OF PROPERTY:** Enter the State and County in which the claim is located, name of the claim, mining district, Section, Township and Range, and also the recording or filing date.

**ITEM 2 - TERM:** The beginning date of the lease should be the date possession is surrendered to the Government. The ending date to be entered is the last day of the fiscal year in which possession is surrendered to the Government.

**ITEM 3 - PAYMENT:** The amount payable for the rent will be the lease fee payment to be made for all rights being acquired under the lease and may not exceed \$100.

**ITEM 4 - EXECUTION BY LESSOR:** Leases will be executed in triplicate. Execution of the lease on behalf of the Lessor will be by the parties whose names appear in the opening paragraph, except in the case of a corporation or partnership authorized by statute to hold and convey title to real property. Execution for corporations, and partnerships authorized by statute to hold and convey title to real property, will be by the official duly authorized to do so and will be in the following manner:

XYZ Corporation		XYZ Partnership
By: _____	or	By: _____
(Name and Title)		(Name and Title)

In the case of a private corporation the authority of the corporate official to execute the lease will be certified by the Secretary or Assistant Secretary of the corporation in the place provided in the Lease. In the case of public and private corporations, a certified copy of the resolution of the proper corporate body authorizing the conveyance to the Government is to be obtained; and in the case of a partnership similar proof of authorization, as well as proof of authority of the partnership official in its behalf, is to be obtained. The execution by or on behalf of the Lessor shall be witnessed, or acknowledged if required by local law, and the date of execution shown. If necessary, an additional page may be attached to provide sufficient space for signatures, notary's acknowledgment and appropriate certificate if a corporation.

**ITEM 5 - EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT:** Execution on behalf of the United States is to be by the contracting officer authorized to do so, and is to be witnessed.

**ITEM 6:** Self-explanatory.

APPENDIX 15-C

FROM DEPARTMENT OF THE INTERIOR

Decisions Relating to the Public Lands

INSTRUCTIONS  
January 13, 1916

ROADS, TRAILS, BRIDGES, ETC. IN NATIONAL FORESTS - EXCEPTION IN PATENTS.

Where "roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection, and development of the national forests," have been actually constructed and are being maintained upon public lands of the United States under the provisions of the Act of March 4, 1915, or survey has been made and the area needed for such improvements definitely fixed and the construction thereof has been provided for and will be immediately undertaken, and the lands are thereafter disposed of under any of the Public Lands Laws, the final certificate and patent should except such portion thereof as is so devoted to public purposes.

4631<sup>0</sup> - VOL. 44-15-33

JONES, First Assistant Secretary:

I am in receipt of your (Secretary of Agriculture) letter of November 4, 1915, referring to the instruction of this Department, dated August 31, 1915 (44 L. D., 359), to the Commissioner of the General Land Office, concerning constructed Forest Service telephone lines crossing lands within national forests and listed and entered under the Homestead Law of June 11, 1906. The Commissioner of the General Land Office was there instructed as follows:

In cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared as to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office and if the land be thereafter listed or disposed of under any applicable Public Lands Law, you should insert in the Register's final certificate and in the patent when issued the following exception:

"Excepting, however, from the conveyance that certain telephone line and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States."

In your present communication, you refer to the Appropriation Act of March 4, 1915 (38 Stat., 1100), containing the following provision:

For the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection and development of the national forests, \$400,000 -

and state as follows:

This Act provides for the construction of such improvements of the foregoing class as may be necessary for the purpose already enumerated, and provides as well for the maintenance of those which are already constructed. The expenditure of money from this subappropriation, in accordance with its provisions, would appear to me directly to result in devoting to public purposes the land upon which such

APPENDIX 15-C (continued)

money is expended. This expenditure may be either for construction or maintenance. One of the first and most desirable things, either for construction or maintenance, is definite location by means of survey. I see no reason why the expense of such survey should not be charged against the appropriation quoted, and it would appear to me that such expenditure would in itself be sufficient to devote the land to public purposes as being "necessary for the purpose of proper and economical administration, protection, and development of the national forests."

I shall appreciate it if you will advise me whether in the case of such expenditure and the subsequent listing of the land, your Department has authority to include such an exception in the final certificate and patent, provided at the time of listing you are furnished with evidence of the fact that a certain part of the land has been so devoted to public purposes, accompanied by the necessary tracings showing the location and extent of such appropriation.

I am of the opinion that the same reasoning as adopted in the Department's Instructions of August 31, 1915, to the Commissioner of the General Land Office, relative to telephone lines constructed under authority of similar appropriation acts applies to the other kinds of improvements mentioned in the above Act of March 4, 1915; and that similar exceptions as to lands needed for such improvements may be inserted in the Register's final certificate, and in the patent when issued. Your communication, however, would appear to take the view that a mere preliminary survey is sufficient as a devotion of the land to the public use indicated. Without expressing a definite opinion at this time, I would incline to the view that a mere preliminary survey, which might or might not be later followed by construction, is not an appropriation of the land to the public use. It would seem that some action indicating upon the ground itself that the tract has been devoted to the public use, is necessary--such as staking the area to be retained by the United States, accompanied by a setting aside of a sufficient part of the appropriation for construction. In other words, the case should be one of either actual construction, or in which the evidence shows that the construction has been provided for, and will be immediately undertaken.

A copy of this communication has been furnished the Commissioner of the General Land Office, for his information.